

REMARKS/ARGUMENTS

This is in response to the official action dated July 25, 2007. Reconsideration is respectfully requested.

Claim Rejections - 35 USC § 112

Claims 4 and 9 were rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Both claims were canceled and thus, the rejection is moot.

Claim Rejections - 35 USC § 102

Claims 1-5 and 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Pons (U.S. Patent No. 4,425,302).

Applicant submits that Pons teaches an electrical sublimator of perfumed bars and/or insecticides, which includes a current receiving reservoir and a compartment in which a bar is disposed, so that the bar gradually receives the heat necessary for the slow sublimation of the bar. The reservoir has openings through which the vapors of the bar are discharged. The openings also comprise a manually-operated slide with a blade for removing the bar from the compartment in which it is housed. The free front of the casing is provided with holes in which there are disposed respective metal bushings covered with insulating sleeves. The metal bushings are connected to the plug of the assembly and to the heating resistance of the bar, and constitute receivers for another plug.

The Examiner states that Pons' apparatus would be capable of being adapted to transmit an active substance in the vapor phase to an atmosphere, and would comprise an active substance incorporated in a sublimable carrier substance (bar) and a heating element (heating resistance) that has a subliming effect on only part of the total sublimable carrier substance. Pons further discloses that the carrier substance (bar) and heating element (heating resistances) are arranged such that the sublimable carrier substance subliming at that part of the sublimable carrier substance affected by the heating element is replaced by further sublimable carrier substances. He continued stating that when the apparatus is plugged into the electrical outlet in a vertical wall

the heating element is arranged in a horizontal direction (see fig. 1).

Applicant respectfully disagrees with the Examiner. Electrical active and neutral pins in both Spain and the USA, are horizontally disposed. This means that the sublimable bar will never be resting on a substantially horizontal surface, as the bar will sit vertically as will the heating element. While it is conceivable that the plug body could be orientated such that the heating element lies horizontally and the sublimable bar sits on top of it, there is no disclosure of that, and indeed there is no need for such interest in it. Pons's teaching is directed to the slide and the ability to easily remove the sublimable bars. There is no teaching that would anticipate the present invention as claimed.

In addition, Claims 1, 3, 5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel. Patel discloses a volatile substance dispenser which provides an indication of the dissipation of a quantity of volatile substance by changing an electrical signal level after a time duration corresponding to an expected period time for the quantity of volatile substance to disseminate. A heat source causes the volatile substance to disseminate into the atmosphere. Dissipation of the volatile substance is indicated. For example, dissipation may be indicated by a light bulb burning out where the light bulb is a limited duration bulb with a lifetime that corresponds to the quantity of volatile substance. The dispenser may be disposable and may also serve as a night light. Nowhere does Patel disclose any material that is "sublime", of that is "sublimable". Nowhere is there any sublimable carrier substance.

In col. 5, lines 1-4, Patel states that "with respect to the volatile substance 48, the substance may be in the form of a solid, liquid or gel. In the case of a solid volatile substance, the volatile substance may be in the form of a stick or a cake." However, Patel also states that a "further object of the invention is to provide a volatile substance dispenser which provides dissipation indication although the volatile substance is impregnated in an absorbent material and dissipation cannot be readily determined by viewing the volatile substance". Thus, there is no sublimation disclosed or considered by Patel. The dissipation indication is achieved by and charging an electrical signal level after time duration that corresponds to an expected period of time for the quantity of volatile substance to disseminate, see Col. 3, lines 11-13. Patel suggests as one way of doing this is to use a light bulb of limited lifetime, see Col. 3, 1.14-24. Thus, sublimable substance is not part of Patel's disclosure.

In addition, Applicants points out that the Patel device is meant to fit into a wall socket. In other words, there is no provision of a substantially horizontal surface on which the sublimable carrier rests. In addition, the drawing clearly shows that the sublimable substance is mounted in a tray (47), so it couldn't possibly act in the manner claimed by Applicants' instant invention.

Claim Rejections - 35 USC § 103

Claim 6 is rejected as being unpatentable over Patel et al. and further in view of Spector. Concerning Patel, states that Patel would provide a sealing of the bottom end of the tray (47) is accomplished by a surface that is substantially horizontal and is in intimate, heat conducting contact with the electric heating element (bulb 44).

In contrast, Applicant point out that once plugged into a wall socket for use, the device of Patel is not at all horizontal. Moreover, it nowhere states that the fragrance source is in contact with the heating element. Indeed, given how hot a bulb can get, it is more likely to have it spaced from the fragrance source. Thus, whether or not the tray is tubular is totally irrelevant. In addition, the very existence of a tray proves that the device cannot work in the same fashion - if a tray were resting on a heated horizontal surface, it would soon prevent contact between a sublimable substance and the heated surface, unless the tray itself melted or vaporized..

Combining Patel with Spector would not cure the deficiency the primary reference has. Patel does not define the shape of his tray, so it might very well be tubular, and thus, Spector adds nothing. In addition, the Examiner admits that Spector uses "a tubular impregnated porous material" - which shows that there is no sublimable substance. Regardless of the shape of Patel's tray, it does not alter the basic configuration or the function of the Patel device at all.

For these reasons, the combination does not make claim 6, as amended, obvious.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant

Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No.

Response to Office Action of July 25, 2007
U.S. Serial No. US 10/561,753

Page 6

RECEIVED
CENTRAL FAX CENTER

DEC 20 2007

14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,
NORRIS McLAUGHLIN & MARCUS, P.A.

By Christa Hildebrand
Christa Hildebrand
Reg. No. 34,953
875 Third Avenue - 18th Floor
New York, New York 10022
Phone: (212) 808-0700
Fax: (212) 808-0844
Facsimile: (212) 808-0844